

REMARKS

The Office Action mailed July 3, 2007 considered claims 1-28, 42-46, 48-56 and 59-61. Claims 1-4, 8-13, 16, 17, 19-24, 26, 27, 48, 49, 59 and 61 were rejected under 35 U.S.C. 103(a) as being unpatentable over Freund et al. (US 2003/0167405) hereinafter *Freund* and further in view of Hauduc et al. (US 6,904,401) hereinafter *Hauduc*. Claims 5-7, 14, 15, 18, 25, 28, 54 and 55 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of *Hauduc* and further in view of Lipe et al. (US 5,748,980) hereinafter *Lipe*. Claims 42-44 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of Sobeski et al. (US 6,633,315) hereinafter *Sobeski*. Claims 45, 52 and 53 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of *Hauduc* and further in view of Phillips (US 6,748,195) hereinafter *Phillips*. Claims 46 and 60 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of *Hauduc* and further in view of *Sobeski*. Claims 50 and 51 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of *Hauduc* and further in view of Akiyama et al. (US 6,757,821) hereinafter *Akiyama*. Claim 56 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of *Hauduc* and further in view of Korpi et al. (US 6,198,696) hereinafter *Korpi*.¹

Of the pending claims, claim 1 and claim 42 are the independent claims at issue.

I. Statement Concerning Common Ownership with Respect to Claim 1

Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view *Hauduc*. However, applicant respectfully submits that *Hauduc* can not be used to preclude patentability under 35 U.S.C. § 103. Specifically, if *Hauduc* qualifies as prior art, it does so only under 35 U.S.C. § 102(e). However, the present application and *Hauduc* were each owned by, or under an obligation of assignment to, the same Assignee—namely Microsoft—at the time the claimed invention was made. As a result, *Hauduc* is disqualified as art which may be used in a rejection based on 35 U.S.C. § 103(a).

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

II. Statement Concerning Common Ownership with Respect to Claim 42

Claim 42 was rejected under 35 U.S.C. 103(a) as being over *Freund* in view of *Sobeski*. However, applicant respectfully submits that *Sobeski* can not be used to preclude patentability under 35 U.S.C. § 103. Specifically, if *Sobeski* qualifies as prior art, it does so only under 35 U.S.C. § 102(e). However, the present application and *Sobeski* were each owned by, or under an obligation of assignment to, the same Assignee—namely Microsoft—at the time the claimed invention was made. As a result, *Sobeski* is disqualified as art which may be used in a rejection based on 35 U.S.C. § 103(a).

As a result of the disqualifications of *Hauduc* and *Sobeski*, there are no pending rejections of any independent claims. In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 4th day of September, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.D. Nydegger".

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